

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Swanson

December 1, 2008

An act to add Sections 266m and 266n to the Penal Code, relating to sex offenses, declaring the urgency thereof, to take effect immediately. An act to amend Sections 186.2, 266k, and 13837 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Swanson. ~~Prostitution: solicitation, pimping, and pandering.~~ *Human trafficking.*

Under existing law, a person who is convicted of human trafficking where the victim is under 18 years of age is punishable by imprisonment in the state prison. A person convicted of soliciting or agreeing to engage in an act of prostitution is guilty of a misdemeanor, punishable by imprisonment in the county jail for up to 6 months and a fine of up to \$1,000. Under existing law, a person who is convicted of pimping, pandering, or procurement of a child under 16 years of age is guilty of a felony, punishable by imprisonment in the state prison and a fine of up to \$15,000. In addition, under existing law, the court may impose a fine of up to \$5,000 on a person convicted of pimping, pandering, or procuring a child under 16 years of age for any of those purposes, the proceeds of which are deposited into the Victim-Witness Assistance Fund, to be made available to child sexual exploitation and child sexual abuse victim counseling centers and prevention programs.

This bill would require a court to impose upon any person who solicits another person to engage in an act of prostitution in return for money

~~or other consideration or who agrees to give another person money or other consideration in return for the other person committing an act of prostitution, in addition to any punishment prescribed or fine imposed under other applicable provisions, a fine of no less than \$250 and no more than \$2,500 per conviction, as determined by the court. The bill would also require a court to impose upon any person who is convicted of pimping, pandering, or procuring of a child under 16 years of age, in addition to any other punishment prescribed, a fine of no less than \$2,500 and no more than \$250,000 per conviction, as determined by the court. In addition, this bill would authorize the court to impound any personal property used in the course of that unlawful conduct for a period of up to 60 days. If the person has previously been convicted of one of those offenses, the court would be authorized to order any personal property used in the course of committing the violation forfeited, pursuant to specified procedures. If real property is used in a violation of those provisions, the bill would apply to that property existing provisions of law declaring property used for illegal purposes to be a nuisance. By imposing additional duties on local officials, this bill would create a state-mandated local program.~~

~~This bill would also require each county to establish a sexually exploited minors fund into which shall be deposited the proceeds of those additional fines imposed or forfeitures made pursuant to the provisions of this bill from convictions in that county. Fifty percent of the money in that fund would be available to local law enforcement for the enforcement of specified crimes, and 50% would be available to community-based organizations that assist sexually exploited minors through prevention, education, counseling, job training, and life skills programs.~~

~~This bill would authorize local law enforcement agencies to make public or make available to media outlets the name and photograph of any person who is convicted pursuant to the above provisions.~~

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property acquired through a pattern of criminal profiteering activity and for the forfeiture of the proceeds of a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes.

This bill would include abduction or procurement by fraudulent inducement for prostitution within the definition of criminal profiteering activity, as specified.

Existing law authorizes the sentencing court to impose an additional fine of up to \$5,000 on any person convicted of pimping, pandering, or procurement of a child under 16 years of age, as specified.

This bill would increase the maximum amount of additional authorized fine to \$20,000, as specified.

Existing law requires the Office of Emergency Services to provide grants to proposed and existing child sexual exploitation and child sexual abuse victim counseling centers and prevention programs, as specified.

This bill would require 50 percent of the funds granted to those centers and programs to be granted to community-based organizations that serve minor victims of human trafficking.

Because this bill would increase the penalty for an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.2 of the Penal Code is amended to
2 read:

3 186.2. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Criminal profiteering activity” means any act committed
6 or attempted or any threat made for financial gain or advantage,
7 which act or threat may be charged as a crime under any of the
8 following sections:

9 (1) Arson, as defined in Section 451.

10 (2) Bribery, as defined in Sections 67, 67.5, and 68.

- 1 (3) Child pornography or exploitation, as defined in subdivision
- 2 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
- 3 prosecuted as a felony.
- 4 (4) Felonious assault, as defined in Section 245.
- 5 (5) Embezzlement, as defined in Sections 424 and 503.
- 6 (6) Extortion, as defined in Section 518.
- 7 (7) Forgery, as defined in Section 470.
- 8 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
- 9 and Section 337i, except the activities of a person who participates
- 10 solely as an individual bettor.
- 11 (9) Kidnapping, as defined in Section 207.
- 12 (10) Mayhem, as defined in Section 203.
- 13 (11) Murder, as defined in Section 187.
- 14 (12) Pimping and pandering, as defined in Section 266.
- 15 (13) Receiving stolen property, as defined in Section 496.
- 16 (14) Robbery, as defined in Section 211.
- 17 (15) Solicitation of crimes, as defined in Section 653f.
- 18 (16) Grand theft, as defined in Section 487.
- 19 (17) Trafficking in controlled substances, as defined in Sections
- 20 11351, 11352, and 11353 of the Health and Safety Code.
- 21 (18) Violation of the laws governing corporate securities, as
- 22 defined in Section 25541 of the Corporations Code.
- 23 (19) Any of the offenses contained in Chapter 7.5 (commencing
- 24 with Section 311) of Title 9, relating to obscene matter, or in
- 25 Chapter 7.6 (commencing with Section 313) of Title 9, relating to
- 26 harmful matter that may be prosecuted as a felony.
- 27 (20) Presentation of a false or fraudulent claim, as defined in
- 28 Section 550.
- 29 (21) False or fraudulent activities, schemes, or artifices, as
- 30 described in Section 14107 of the Welfare and Institutions Code.
- 31 (22) Money laundering, as defined in Section 186.10.
- 32 (23) Offenses relating to the counterfeit of a registered mark,
- 33 as specified in Section 350.
- 34 (24) Offenses relating to the unauthorized access to computers,
- 35 computer systems, and computer data, as specified in Section 502.
- 36 (25) Conspiracy to commit any of the crimes listed above, as
- 37 defined in Section 182.
- 38 (26) Subdivision (a) of Section 186.22, or a felony subject to
- 39 enhancement as specified in subdivision (b) of Section 186.22.

1 (27) Any offenses related to fraud or theft against the state's
2 beverage container recycling program, including, but not limited
3 to, those offenses specified in this subdivision and those criminal
4 offenses specified in the California Beverage Container Recycling
5 and Litter Reduction Act, commencing at Section 14500 of the
6 Public Resources Code.

7 (28) Human trafficking, as defined in Section 236.1.

8 (29) Theft of personal identifying information, as defined in
9 Section 530.5.

10 (30) Offenses involving the theft of a motor vehicle, as specified
11 in Section 10851 of the Vehicle Code.

12 (31) *Abduction or procurement by fraudulent inducement for*
13 *prostitution, as defined in Section 266a.*

14 (b) (1) "Pattern of criminal profiteering activity" means
15 engaging in at least two incidents of criminal profiteering, as
16 defined by this chapter, that meet the following requirements:

17 (A) Have the same or a similar purpose, result, principals,
18 victims, or methods of commission, or are otherwise interrelated
19 by distinguishing characteristics.

20 (B) Are not isolated events.

21 (C) Were committed as a criminal activity of organized crime.

22 (2) Acts that would constitute a "pattern of criminal profiteering
23 activity" may not be used by a prosecuting agency to seek the
24 remedies provided by this chapter unless the underlying offense
25 occurred after the effective date of this chapter and the prior act
26 occurred within 10 years, excluding any period of imprisonment,
27 of the commission of the underlying offense. A prior act may not
28 be used by a prosecuting agency to seek remedies provided by this
29 chapter if a prosecution for that act resulted in an acquittal.

30 (c) "Prosecuting agency" means the Attorney General or the
31 district attorney of any county.

32 (d) "Organized crime" means crime that is of a conspiratorial
33 nature and that is either of an organized nature and seeks to supply
34 illegal goods and services such as narcotics, prostitution,
35 loan-sharking, gambling, and pornography, or that, through
36 planning and coordination of individual efforts, seeks to conduct
37 the illegal activities of arson for profit, hijacking, insurance fraud,
38 smuggling, operating vehicle theft rings, fraud against the beverage
39 container recycling program, or systematically encumbering the
40 assets of a business for the purpose of defrauding creditors.

1 “Organized crime” also means crime committed by a criminal
2 street gang, as defined in subdivision (f) of Section 186.22.
3 “Organized crime” also means false or fraudulent activities,
4 schemes, or artifices, as described in Section 14107 of the Welfare
5 and Institutions Code, and the theft of personal identifying
6 information, as defined in Section 530.5.

7 (e) “Underlying offense” means an offense enumerated in
8 subdivision (a) for which the defendant is being prosecuted.

9 *SEC. 2. Section 266k of the Penal Code is amended to read:*

10 266k. (a) Upon the conviction of any person for a violation
11 of Section 266h, 266i, or 266j, the court may, in addition to any
12 other penalty or fine imposed, order the defendant to pay an
13 additional fine not to exceed ~~five thousand dollars (\$5,000)~~ *twenty*
14 *thousand dollars (\$20,000)*. In setting the amount of the fine, the
15 court shall consider any relevant factors including, but not limited
16 to, the seriousness and gravity of the offense and the circumstances
17 of its commission, whether the defendant derived any economic
18 gain as the result of the crime, and the extent to which the victim
19 suffered losses as a result of the crime. Every fine imposed and
20 collected under this section shall be deposited in the
21 Victim-Witness Assistance Fund to be available for appropriation
22 to fund child sexual exploitation and child sexual abuse victim
23 counseling centers and prevention programs under Section 13837.

24 (b) If the court orders a fine to be imposed pursuant to this
25 section, the actual administrative cost of collecting that fine, not
26 to exceed 2 percent of the total amount paid, may be paid into the
27 general fund of the county treasury for the use and benefit of the
28 county.

29 *SEC. 3. Section 13837 of the Penal Code is amended to read:*

30 13837. (a) The OES shall provide grants to proposed and
31 existing child sexual exploitation and child sexual abuse victim
32 counseling centers and prevention programs, *including programs*
33 *for minor victims of human trafficking*. Grant recipients shall
34 provide appropriate in-person counseling and referral services
35 during normal business hours, and maintain other standards or
36 services which shall be determined to be appropriate by the
37 advisory committee established pursuant to Section 13836 as grant
38 conditions. The advisory committee shall identify the criteria to
39 be utilized in awarding the grants provided by this chapter before
40 any funds are allocated.

1 In order to be eligible for funding pursuant to this chapter, the
2 centers shall demonstrate an ability to receive and make use of
3 any funds available from governmental, voluntary, philanthropic,
4 or other sources which may be used to augment any state funds
5 appropriated for purposes of this chapter. Each center receiving
6 funds pursuant to this chapter shall make every attempt to qualify
7 for any available federal funding.

8 State funds provided to establish centers shall be utilized when
9 possible, as determined by the advisory committee, to expand the
10 program and shall not be expended to reduce fiscal support from
11 other public or private sources. The centers shall maintain quarterly
12 and final fiscal reports in a form to be prescribed by the
13 administering agency. In granting funds, the advisory committee
14 shall give priority to centers which are operated in close proximity
15 to medical treatment facilities.

16 *Fifty percent of the funds granted to recipients pursuant to this*
17 *section shall be granted to community based organizations that*
18 *serve minor victims of human trafficking.*

19 (b) (1) It is the intent of the Legislature that a goal or purpose
20 of the OES shall be to ensure that all victims of sexual assault and
21 rape receive comprehensive, quality services, and to decrease the
22 incidence of sexual assault through school and community
23 education and prevention programs.

24 (2) The OES and the advisory committee established pursuant
25 to Section 13836 shall collaboratively administer sexual
26 assault/rape crisis center victim services programs and provide
27 grants to proposed and existing sexual assault services programs
28 (SASPs) operating local rape victim centers and prevention
29 programs. All SASPs shall provide the services in subparagraphs
30 (A) to (G), inclusive, and to the extent federal funding is made
31 available, shall also provide the service described in subparagraph
32 (H). The OES shall provide financial and technical assistance to
33 SASPs in implementing the following services:

- 34 (A) Crisis intervention, 24 hours per day, seven days per week.
- 35 (B) Followup counseling services.
- 36 (C) In-person counseling, including group counseling.
- 37 (D) Accompaniment services.
- 38 (E) Advocacy services.
- 39 (F) Information and referrals to victims and the general public.
- 40 (G) Community education presentations.

1 (H) Rape prevention presentations and self-defense programs.

2 (3) The funding process for distributing grant awards to SASPs
3 shall be administered as follows:

4 (A) The OES and the advisory committee established pursuant
5 to Section 13836 shall collaboratively adopt each of the following:

6 (i) The process and standards for determining whether to grant,
7 renew, or deny funding to any SASP applying or reapplying for
8 funding under the terms of the program.

9 (ii) For SASPs applying for grants under the RFP process
10 described in subparagraph (B), a system for grading grant
11 applications in relation to the standards established pursuant to
12 clause (i), and an appeal process for applications that are denied.
13 A description of this grading system and appeal process shall be
14 provided to all SASPs as part of the application required under the
15 RFP process.

16 (iii) For SASPs reapplying for funding under the RFA process
17 described in subparagraph (D), a system for grading the
18 performance of SASPs in relation to the standards established
19 pursuant to clause (i), and an appeal process for decisions to deny
20 or reduce funding. A description of this grading system and appeal
21 process shall be provided to all SASPs receiving grants under this
22 program.

23 (B) Grants for centers that have previously not been funded or
24 were not funded in the previous cycle shall be awarded as a result
25 of a competitive request for proposal (RFP) process. The RFP
26 process shall comply with all applicable state and federal statutes
27 for sexual assault/rape crisis center funding, and to the extent
28 possible, the response to the RFP shall not exceed 25 narrative
29 pages, excluding attachments.

30 (C) Grants shall be awarded to SASPs that propose to maintain
31 services previously granted funding pursuant to this section, to
32 expand existing services or create new services, or to establish
33 new sexual assault/rape crisis centers in underserved or unserved
34 areas. Each grant shall be awarded for a three-year term.

35 (D) SASPs reapplying for grants shall not be subject to a
36 competitive bidding grant process, but shall be subject to a request
37 for application (RFA) process. The RFA process for a SASP
38 reapplying for grant funds shall consist in part of an assessment
39 of the past performance history of the SASP in relation to the
40 standards established pursuant to subparagraph (A). The RFA

1 process shall comply with all applicable state and federal statutes
2 for sexual assault/rape crisis center funding, and to the extent
3 possible, the response to the RFA shall not exceed 10 narrative
4 pages, excluding attachments.

5 (E) Any SASP funded through this program in the previous
6 grant cycle shall be funded upon reapplication, unless its past
7 performance history fails to meet the standards established pursuant
8 to clause (i) of subparagraph (A).

9 (F) The OES shall conduct a minimum of one site visit every
10 three years for each agency funded to provide sexual assault/rape
11 crisis centers. The purpose of the site visit shall be to conduct a
12 performance assessment of, and provide subsequent technical
13 assistance for, each center visited. The performance assessment
14 shall include, but need not be limited to, a review of all of the
15 following:

16 (i) Progress in meeting program goals and objectives.

17 (ii) Agency organization and facilities.

18 (iii) Personnel policies, files, and training.

19 (iv) Recordkeeping, budgeting, and expenditures.

20 (v) Documentation, data collection, and client confidentiality.

21 (G) After each site visit conducted pursuant to subparagraph
22 (F), the OES shall provide a written report to the SASP
23 summarizing the performance of the SASP, any deficiencies noted,
24 any corrective action needed, and a deadline for corrective action
25 to be completed. The OES shall also develop a corrective action
26 plan for verifying the completion of any corrective action required.
27 The OES shall submit its written report to the SASP no more than
28 60 days after the site visit. No grant under the RFA process shall
29 be denied if the SASP did not receive a site visit during the
30 previous three years, unless the OES is aware of criminal violations
31 relative to the administration of grant funding.

32 (H) SASPs receiving written reports of deficiencies or orders
33 for corrective action after a site visit shall be given no less than
34 six months' time to take corrective action before the deficiencies
35 or failure to correct may be considered in the next RFA process.
36 However, the OES shall have the discretion to reduce the time to
37 take corrective action in cases where the deficiencies present a
38 significant health or safety risk or when other severe circumstances
39 are found to exist. If corrective action is deemed necessary, and a
40 SASP fails to comply, or if other deficiencies exist that, in the

1 judgment of the OES, cannot be corrected, the OES shall
2 determine, using its grading system, whether continued funding
3 for the SASP should be reduced or denied altogether. If a SASP
4 has been determined to be deficient, the OES may, at any point
5 during the SASP's funding cycle following the expiration of the
6 period for corrective action, deny or reduce any further funding.

7 (I) If a SASP applies or reapplies for funding pursuant to this
8 section and that funding is denied or reduced, the decision to deny
9 or reduce funding shall be provided in writing to the SASP, along
10 with a written explanation of the reasons for the reduction or denial
11 made in accordance with the grading system for the RFP or RFA
12 process. Except as otherwise provided, any appeal of the decision
13 to deny or reduce funding shall be made in accordance with the
14 appeal process established by the OES. The appeal process shall
15 allow a SASP a minimum of 30 days to appeal after a decision to
16 deny or reduce funding. All pending appeals shall be resolved
17 before final funding decisions are reached.

18 (J) It is the intent of the Legislature that priority for additional
19 funds that become available shall be given to currently funded,
20 new, or previously unfunded SASPs for expansion of services.
21 However, the OES may determine when expansion is needed to
22 accommodate underserved or unserved areas. If supplemental
23 funding is unavailable, the OES shall have the authority to lower
24 the base level of grants to all currently funded SASPs in order to
25 provide funding for currently funded, new, or previously unfunded
26 SASPs that will provide services in underserved or unserved areas.
27 However, to the extent reasonable, funding reductions shall be
28 reduced proportionately among all currently funded SASPs. After
29 the amount of funding reductions has been determined, SASPs
30 that are currently funded and those applying for funding shall be
31 notified of changes in the available level of funding prior to the
32 next application process. Funding reductions made under this
33 paragraph shall not be subject to appeal.

34 (K) Notwithstanding any other provision of this section, the
35 OES may reduce funding to a SASP funded pursuant to this section
36 if federal funding support is reduced. Funding reductions as a result
37 of a reduction in federal funding shall not be subject to appeal.

38 (L) Nothing in this section shall be construed to supersede any
39 function or duty required by federal acts, rules, regulations, or
40 guidelines for the distribution of federal grants.

(M) As a condition of receiving funding pursuant to this section, a SASP shall do each of the following:

(i) Demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources that may be used to augment any state funds appropriated for purposes of this chapter.

(ii) Make every attempt to qualify for any available federal funding.

(N) For the purposes of this paragraph, “sexual assault” means an act or attempt made punishable by Section 220, 261, 261.5, 262, 264.1, 266c, 285, 286, 288, 288a, or 647.6.

(O) For the purposes of this paragraph, “sexual assault service program” or “SASP” means an agency operating a sexual assault/rape crisis center.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. This act shall be known, and may be cited as, the Human Trafficking Accountability Act.~~

~~SEC. 2. Section 266m is added to the Penal Code, to read:~~

~~266m. (a) (1) Any person who is convicted of a violation of Section 647.5 shall be fined, in addition to any punishment or fine prescribed in other applicable provisions, including Section 266k, no less than two hundred fifty dollars (\$250) and no more than two thousand five hundred dollars (\$2,500) per conviction, as determined by the court.~~

~~(2) Any person who is convicted of a violation of Section 266h, 266i, 266j, or subdivision (c) of Section 236.1 shall be fined, in addition to any punishment or fine prescribed in other applicable provisions, including Sections 266h, 266i, 266j, and 266k, no less than two thousand five hundred dollars (\$2,500) and no more than two hundred fifty thousand dollars (\$250,000) per conviction, as determined by the court.~~

~~(3) Upon conviction of an offense subjecting a person to a fine pursuant to paragraph (1) or (2), the court may impound any personal property used in the course of the unlawful conduct for a period of up to 60 days. The owner of the property shall be responsible for all fees and charges related to the impoundment. The impoundment procedures set forth in Section 22659.5 of the Vehicle Code shall apply to this section.~~

~~(b) If the person has previously been convicted of violating Section 266h, 266i, 266j, or 647.5, the court may order any personal property used in the course of committing the violation forfeited, pursuant to the procedures in Section 502.01. If real property is used, the procedures declaring the property to be a nuisance in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 shall apply.~~

~~(c) A local law enforcement agency may make public or may make available to media outlets the name and photograph of any person who is subject to this section.~~

~~SEC. 3. Section 266n is added to the Penal Code, to read:~~

~~266n. (a) Each county shall establish a Sexually Exploited Minors Fund into which shall be deposited the proceeds of any fines imposed or forfeitures made pursuant to Section 266m from convictions in that county. After the withdrawal of moneys pursuant to subdivision (b), fifty percent of the money in that fund shall be available to local law enforcement for the enforcement of crimes involving the sexual exploitation of minors and fifty percent shall be available to nonprofit community-based organizations that assist sexually exploited minors through education, counseling, job training, and life skills programs.~~

~~(b) Money in a county's Sexually Exploited Minors Fund may be used to reimburse the county for the reasonable administrative costs associated with the collection of a fine imposed pursuant to Section 266m, not to exceed 2 percent of the total amount paid.~~

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.~~

~~SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within~~

1 ~~the meaning of Article IV of the Constitution and shall go into~~
2 ~~immediate effect. The facts constituting the necessity are:~~
3 ~~In order to protect minors in California from current and ongoing~~
4 ~~crimes involving sexual exploitation it is necessary that this~~
5 ~~legislation take effect immediately.~~

O